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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/766,738	01/27/2004	Roland Hengerer	426882007800	2842
20872	7590	06/06/2005	EXAMINER	
MORRISON & FOERSTER LLP 425 MARKET STREET SAN FRANCISCO, CA 94105-2482			DESTA, ELIAS	
			ART UNIT	PAPER NUMBER
			2857	

DATE MAILED: 06/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/766,738	HENGGERER, ROLAND	
	Examiner	Art Unit	
	Elias Desta	2857	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 January 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>3/8/2004</u> . | 6) <input type="checkbox"/> Other: _____ |

Detailed Action

Drawing

1. The drawing is objected to because of the following minor informalities:

➤ Fig. 1:

- All individual lines pointing to subsections should have to have an arrow pointing to the subsection for better distinction rather than simple adjoining lines;
- Blank boxes, especially section 6 and 5 should be labeled as to function.

Specification

2. The specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

Claim rejection – 35 U.S.C. 112

3. Claims 1-11 are rejected under 35 U.S.C. 112, second paragraph, where the phrase "such as" in claim 1 renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

Claim rejection – 35 U.S.C. 101 and 112

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claims 1-12 are rejected under 35 U.S.C. 101 because the claimed invention is not supported by either a substantial asserted utility or a well established utility, because the scent detected by the electronic sensor includes values which are beyond the range traced by human olfactory property where a scent is any property detected by the olfactory system. Further, applicant's assertion that "electronic noses can detect 'non-smelling' scents" is quite a contradiction (see page 3 of Applicant's specification) because the purpose of the claimed invention is to detect the age of an object through the level of smell (human sense of response to a smell) detected by electronic nose. The decay rate, which is the level of decomposition rate of the material under measurement, does not have a definite correlation with scent ratio because the outcome of the two variables is not formulated by a well-behaved function, and applicant has not shown otherwise. The values sensed by the "electronic nose" don't seem to have a specific value, like physiologically or chemically interpretable values (such as frequency, PH or concentration values).

Claims 1-12 are also rejected under 35 U.S.C. 112, first paragraph.

Specifically, since the claimed invention is not supported by either a substantial

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asserted utility or a well established utility for the reasons set forth above, one skilled in the art clearly would not know how to use the claimed invention.

Conclusion

6. Citation of pertinent prior art:

- Kaneyasu et al. (IEEE Article, 'Smell Identification Using a Thick-Film Hybrid Gas Sensor') teaches an analytical method and experimental results of identifying and quantifying smells using an electronic system composed of an integrated system and a microcomputer.
- Lewis et al. (U.S. Patent 6,631,333) teaches method for remote characterization of an odor.
- Lewis et al. (U.S. PAP 2002/0142477) teaches sensor array and sensor array system for detecting analyte in fluids.
- Flynn et al. (U.S. PAP 2004/0031314) teaches a method for evaluating the properties of hydrogen to improve the safety of hydrogen fuel, and provides a method for selecting proper odorants for hydrogen.
- Ogasawara (U.S. Patent 6,327,576) teaches system and method for managing expiration-dated products using electronically coded information.
- Hsiung et al. (U.S. Patent 6,895,338) teaches measuring and analyzing multidimensional sensory information for identification purposes.

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➤ Fu (U.S. Patent 6,598,459) teaches artificial olfactory system.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elias Desta whose telephone number is (571)-272-2214. The examiner can normally be reached on M-Thu (8:30-7:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marc S. Hoff can be reached on (571)-272-2216. The fax phone numbers for the organization where this application or proceeding is assigned are (703)-872-9306 for regular communications and After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571)-272-1750.

Elias Desta
Examiner
Art Unit 2857

-ed

May 26, 2005

